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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,256	09/30/2002	Andrew Kaplan	013341-000014	5660
24239	7590	07/09/2004	EXAMINER	
MOORE & VAN ALLEN, PLLC 2200 W MAIN STREET SUITE 800 DURHAM, NC 27705			WOO, JULIAN W	
			ART UNIT	PAPER NUMBER
			3731	9

DATE MAILED: 07/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/065,256

Applicant(s)

KAPLAN ET AL.

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 1-44, 58, 59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                          |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                              | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4-6</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 45, 47-52, 55, and 57 (i.e., invention X, species 2) in the reply filed on February 9, 2004 is acknowledged. The traversal is on the ground(s) that the search and examination of the inventions and species would not pose a serious burden to the Examiner. This is not found persuasive for the restriction requirement, because the inventions are distinct and are not disclosed as used together. Moreover, as the restriction requirement asserted, the inventions have different effects. In short, the divergent subject matter as represented by the inventions would require further and burdensome search and examination.

This requirement is still deemed proper and is therefore made FINAL.

However, the traversal is found to be persuasive for the election of species requirement, so claims 46, 53, 54, and 56, which were directed to other species, have been rejoined with the claims elected above. That is, claims 45-57 are hereby considered, and claims 1-44, 58, and 59 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Buncke (5,931,855). Buncke discloses, in figures 9-12 and in col. 3, lines 14-44 and col. 7, line 48 to col. 8, line 5; a method of performing a cosmetic surgery procedure or a facelift, where first and second ends of a barbed suture (e.g., 55) are inserted, as claimed, into a point of insertion on the surface of a person's body, where the first and second ends extend out of soft tissue (subepidermal tissue) at exit points, and where the barbed suture has an elongated body with first and second sharp pointed distal ends and a plurality of barbs (16), as claimed, extending along the periphery of the body.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 46-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buncke in view of Coggins et al. (5,217,494). Buncke discloses the invention

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substantially as claimed, but does not disclose cosmetic procedures including a browlift, a thigh lift, and a breast lift, where the barbed suture is inserted into subepidermal tissues as claimed in order to provide the desired amount of lift in the aforementioned body parts. Coggins et al. teach a subepidermal implant and method for lifting loose or sagging tissue in cosmetic surgical procedures (see col. 4, line 51 to col. 5, line 10 for tissues involved in cosmetic surgery), such as a face lift, suspension of the buttock, suspension of the eyelid, a thigh lift, and a breast lift (see col. 2, lines 1-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Coggins et al., to apply the invention of Buncke in cosmetic procedures, such as a browlift (which is actually a type of face lift), a thigh lift, and a breast lift. As in a face lift, Buncke's barbed suture and method, which are analogous to the prosthesis and method of Coggins et al., would also provide an effective means for lifting or suspending other sagging tissues.

5. Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buncke in view of Albright et al. (4,493,323). Buncke disclose the invention substantially as claimed, but does not disclose the application of an insertion device with the suture. Albright et al. teach, in figures 6 and 10-13, the application of an insertion device (12) for the insertion of a suture (66) through tissue being joined. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Albright et al., to apply a suture insertion device in the method of Buncke. Such an insertion device would provide a means to insert and guide a suture through tissue at precise locations.

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6. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buncke in view of Albright et al. as applied to claim 55 above, and further in view of Coggins et al. Buncke in view of Albright et al. disclose the invention substantially as claimed, but does not disclose a cosmetic procedure that is a brow lift. Coggins et al. teach a prosthesis and method for the lifting of various tissues in cosmetic procedures, including a face lift. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, in view of Coggins et al., to apply the method Buncke in view of Albright et al. to the brow. Such a method would allow the lifting of a precise location as a brow, which is adjacent to tissues commonly lifted in a conventional face lift as disclosed by Buncke and Albright et al.

### ***Conclusion***


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ness (3,646,615), Brotz (6,270,517), and Jacobs et al. (6,645,226) teach barbed devices for joining tissues. Petros (5,112,344) and Broome (5,207,694) teach suture insertion devices.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The official FAX number is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

July 1, 2004